ment of the security and did not so affect the nature of the debt as to render the note non-negotiable. *Lundeau* v. *Hamilton* (Iowa, 1916), 159 N. W. 163.

It is well settled that a note is negotiable even though secured by a mortgage, and by the weight of authority the mere fact that a note itself contains a reference to such mortgage security endorsed thereon is not sufficient to destroy its negotiability. *Dumas* v. *Bank,* 146 Ala. 226, 40 So. 964; *Biegler* v. *Loan Co.,* 164 Ill. 197; *Zollman* v. *Bank,* 238 Ill. 290, 87 N. E. 297; *Howry* v. *Eppinger,* 34 Mich. 29; *Duncan* v. *Louisville,* 76 Ky. 378; *Bank* v. *Crowell,* 184 Pa. 284; *Bright* v. *Oldfield,* 81 Wash. 442, 143 Pac. 159. The negotiability of the note is not affected by a recital in the endorsement that the note is given according to the conditions of the mortgage, where the terms of the note construed with the mortgage would not impair any essential element of negotiability. *Brooke* v. *Struthers,* 110 Mich. 562, 68 N. W. 272; *Wilson* v. *Campbell,* 110 Mich. 580; *Thorpe* v. *Mindeman,* 123 Wis. 149, 101 N. W. 1117; *Frost* v. *Fisher,* 13 Colo. App. 332, 58 Pac. 872; *Consterdine* v. *Moore,* 65 Neb. 281; *Noell* v. *Gaines,* 68 Mo. 649; *Cwings* v. *McKenzie,* 133 Mo. 323. But where the mortgage contains provisions which do affect some essential element of negotiability, the note is thereby rendered non-negotiable and the assignee is subject to any equities existing in favor of the mortgagor. *Myer* v. *Weber,* 133 Cal. 681, 65 Pac. 1110; *McIntyre* v. *Yates,* 104 Ill. 491; *Brooke* v. *Struthers,* supra; *Taylor* v. *Jones,* 165 Cal. 108; *Allison* v. *Hollembeak,* 138 Iowa 479, 114 N. W. 1059; *Cornish* v. *Wolverton,* 32 Mont. 456, 81 Pac. 4; *Trust Co.* v. *Edgar,* 65 Nebr. 301, 91 N. W. 402; *Garnett* v. *Myers,* 65 Nebr. 287, 91 N. W. 400. As the note is given as evidence of the debt and to fix the terms and times of payment, and the mortgage is simply a pledge of certain property as security for the payment of the note, the weight of authority and better reason would seem to support the holding of the principal case,—that provisions in the mortgage which have to do only with the betterment or preservation of the security do not destroy the negotiability of the note as they do not affect the note itself but only the mortgage. The two contracts are to be construed together, but this simply means that provisions in one limiting or explaining those in the other are to be given effect; hence the holder in due course takes free from equities. *Thorpe* v. *Mindeman,* supra; *Bank* v. *Arthur,* 163 Iowa 211, 143 N. W. 556; *Consterdine* v. *Moore,* supra; *Garnett* v. *Myers,* supra; *Frost* v. *Fisher,* supra; *Hunter* v. *Clark,* supra; *Barker* v. *Satori,* 66 Wash. 260, 119 Pac. 611; *Former* v. *Bank,* 89 Ark. 132; *Carpenter* v. *Longan,* 16 Wall. 271. But see, *Donaldson* v. *Grant,* 15 Utah, 231, 49 Pac. 779; *Myer* v. *Weber,* supra; *Taylor* v. *Jones,* supra; *Briggs* v. *Crawford,* 162 Cal. 124; *Cornish* v. *Wolverton,* supra; *National Hdwe. Co.* v. *Sherwood,* 165 Cal. 1, 130 Pac. 881; *Strong* v. *Jackson,* 123 Mass 60; *Johnson* v. *Carpenter,* 7 Minn. 176; *Helmar* v. *Parsons,* 18 Cal. App. 451, 123 Pac. 356.

CONSTITUTIONAL LAW—EFFECT OF SEVENTH AMENDMENT ON ACTION UNDER FEDERAL STATUTE.—The requirement of the Seventh Amendment to the United States Constitution that trial by jury be according to the course of the common law, *i. e.,* by a unanimous verdict, does not control the state courts

even when enforcing rights under a Federal statute like the Employers' Liability Act of April 22, 1908 (35 Stat. at L. 65, chap. 148, Comp. Stat. 1913, § 8657) and such courts may, therefore, give effect to a local practice permitting a less than unanimous verdict. *Minn. & St. Louis R. R. Co.* v. *Bombolis,* 36 Sup. Ct. 595.

It is elementary that the guarantee in the federal constitution that "the right of trial by jury shall be preserved" is a guarantee of jury trial as it was known at the common law. *Thompson* v. *Utah,* 170 U. S. 343, 18 Sup. Ct. 620, 42 L. Ed. 1061. There can be no question as to what the requirements of a jury were at common law. "The law of England hath afforded the best means of trial that is possible of this and all other matters of fact, namely, by a jury of twelve men all concurring in the same judgment." 1 HALE, P. C. 33. *American Pub. Co.* v. *Fisher,* 166 U. S. 464, 17 Sup. Ct. 618, 41 L. Ed. 1079; *Springville* v. *Thomas,* 166 U. S. 707, 17 Sup. Ct. 717, 41 L. Ed. 1172; *Capital Traction Co.* v. *Hof,* 174 U. S. 1, 19 Sup. Ct. 580, 43 L. Ed. 873. However, the first ten Amendments, including, of course, the seventh, are not concerned with state action and deal only with Federal action. In the language of Chief Justice MARSHALL, "The constitution was ordained and established by the people of the United States for themselves, for their own government, and not for the government of the individual states. * * * The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are, naturally, and, we think, necessarily applicable to the government created by the instrument." *Barron* v. *Baltimore,* 7 Pet. 243, 8 L. Ed. 672. See also, *Fox* v. *Ohio,* 5 How. 410, 434, 12 L. Ed. 213, 223; *Twining* v. *New Jersey,* 211 U. S. 78, 93, 53 L. Ed. 97, 103. And as a necessary corollary, the seventh amendment applies only to proceedings in courts of the United States, and does not in any manner whatever govern or regulate trials by jury in state courts. *Edwards* v. *Elliott,* 21 Wall. 532, 22 L. Ed. 487. The contention was made, however, by the defendant below that inasmuch as the cause of action arose under the federal Employers' Liability Act,—in other words, was Federal in character,—the defendant was by the Seventh Amendment to the Constitution of the United States entitled to have its liability determined only by a unanimous verdict, and not by a five-sixths verdict, permissible under the state statute. Section 6 of the act as amended by Act April 5, 1910 (chap. 143, 36 Stat. at L. 291, Comp. Stat. 1913, ¶ 8662) expressly provides that the state and federal courts shall have concurrent jurisdiction in cases arising under the act. Speaking of the federal Employers' Liability Act in *Mondou* v. *N. Y., N. H. & H. Railroad Co.,* 223 U. S. 1, 32 Sup. Ct. 169, 56 L. Ed. 327, 38 L. R. A. N. S. 44, the Supreme Court said, "There is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts, or to control or affect their modes of procedure." The state courts are therefore at liberty to follow the procedure of their own forum. *St. Louis & S. F. R. Co.* v. *Brown,* 45 Okla. 143, 144 Pac. 1075; *C. & O. Ry.* v. *Kelly's Adm.,* 161 Ky. 655, 171 S. W. 185; *C. & O. Ry. Co.* v. *Carnahan,* 118 Va. 46, 86 S. E. 863.